IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 593 of 2004

in

SPECIAL CIVIL APPLICATION No 6283 of 2000

Date of Decision: 29-07-2004

SHRI G.M. DALWADI - SINCE DECEASED THROUGH HIS HEIRS - SMT.RANJANBEN G. DALWADI & ORS.

VERSUS

STATE OF GUJARAT

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellants Mr. K.G.Pandit, Adv.

For the Respondent Mrs.Manisha Lavkumar, AGP.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Through this Letters Patent Appeal, the appellants (heirs of deceased Shri Gajanand M.Dalwadi) challenge the order of Single Judge dated 30.9.2003 passed in Special Civil Application No.6283 of 2000, thereby reversing the judgment of the Gujarat Civil Services Tribunal,

Gandhinagar (hereinafter referred to as "the Tribunal") in Appeal No.67 of 1999.

Whether reporters of Local Papers may be allowed to see the Judgment?

#. Shortly stated, allegation against the deceased-Shri Gajanand M.Dalwadi was that he issued duplicate licence for the period 22.7.1993 to 21.7.1996, with an intention to cover the period of accident dated 6.11.1993. The Inquiry Officer returned the findings against the delinquent which he challenged before the Tribunal after his removal from service by the competent authority. However, the Tribunal came to the conclusion that the Charge against the delinquent was not proved. It also rejected the evidence of Shri Girish Keshavlal Dudhrejiya that he had not instructed the deceased-Gajanand Dalwadi to prepare the duplicate licence and accepted the defence of the deceased-Gajanand Dalwadi that he prepared the licence to help Shri Dudhrejiya to lessen his burden. No ulterior motive or intention to defraud was proved against the delinquent and adverse inference against the disciplinary was drawn for not examining the driver Narendrakumar and R.T.O. agent - Rasikbhai since these witnesses could have thrown flood of lights on the entire episode. It also took notice of the prevalent practice sharing the burden of colleagues generally. The Tribunal also found that in the facts and circumstances of the case, penalty of removal was too harsh. Consequently, the order of removal was set aside. However, the Single Judge took different view of the matter and came to the conclusion that duplicate licence was issued by the deceased-Gajanand Dalwadi with an intention to defraud the Insurance Company and facilitate receiving of compensation. It did not accept the defence of deceased-Gajanand Dalwadi that he did the job on instructions of Dudhrejiya etc. The whole question falls for consideration in this Appeal.

#. Learned counsel for both the sides were extensively heard, record perused thoroughly with a view to assess whether the conclusions drawn by the Tribunal were justified, therefore, whether there was justification to upturn them by re-appreciating the evidence. It has to be admitted that the deceased-Gajanand Dalwadi prepared the duplicate licence, although he was working on accounts. Why should he prepare the licence? There can be no other answer than accepting his explanation that he did so on the instructions of Shri Dudhrejiya to lessen his burden. Otherwise, it cannot be accepted that a man of accounts could prepare a duplicate licence in somebody

else's branch. Therefore, after arriving at this conclusion, the crucial question for examination is who committed interpolations in the receipts for Rs.20/= and Rs.45/= on the basis of which the duplicate licence was prepared, since these interpolations are fundamental for preparing the duplicate licence being result of the entries on these two documents. There is no evidence suggesting that these receipts and entry in the Register were prepared by the deceased-Gajanand Dalwadi. The deceased-Gajanand Dalwadi has denied it, Shri Dudhrejiya states that he made entries of dated "22.2.1994" on the receipts and "22.2.1994 to 21.2.1994" in the Register but denies having made the interpolations on the receipts and in the Register. But, he does not say that these interpolations were made by the deceased Gajanand Dalwadi. Therefore, the duplicate licence has been prepared on the basis of entries in the Register and the receipts.

Smt.Manisha Lavkumar, learned Assistant Government Pleader, submits that the deceased-Gajanand Dalwadi could have seen that he was preparing duplicate licence for back period, therefore, not realizing this amounts to commission of lapse by him. Yes, the deceased-Gajanand Dalwadi should have been more careful while preparing the duplicate licence, he may have acted foolishly, but there is no evidence to establish that he acted designedly. After all, he may not have understood the nature of work and manner of transacting it since it was not his function since he was working in the accounts. Therefore, the conclusions drawn by the Tribunal were justified and there could be no reason to upturn them.

No other question was advanced for consideration and decision.

#. Therefore, the judgment of Single Judge is set aside. The removal of deceased-Gajanand Dalwadi dated 26.10.1998 is set aside. The appellants shall be entitled to the benefits which could have been available to the deceased - Gajanand Dalwadi from the date of his removal, i.e. 26.10.1998 till he died, i.e. 15.3.2003, as if removal order did not exist and he continued in service for all purposes, and also for the benefits thereafter becoming available to them. The judgment be implemented in two months.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)